

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:06CV129**

**CAPITOL RECORDS, INC., a Delaware
Corporation; UMG RECORDINGS, INC., a
Delaware Corporation; SONY BMG MUSIC
ENTERTAINMENT, a Delaware General
Partnership; BMG MUSIC, a New York
general partnership; and WARNER BROS.
RECORDS INC., a Delaware corporation,**

Plaintiffs,

Vs.

**MELODY GOSNELL, a/k/a MELODY
HAMILTON; and J. H., a minor, by and
through his guardian *ad litem*, MELODY
GOSNELL,**

Defendants.

ORDER

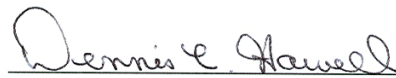
THIS MATTER is before the court on its own Motion for Status. On June 20, 2007, the district court granted plaintiff's Motion to Set Aside Default and appointed defendant Melody Gosnell as guardian *ad litem* for defendant J. H. When plaintiffs filed their Amended Complaint, they requested issuance of a summons for Ms. Gosnell, but failed to request issuance of summons for defendant J. H. Since the district court entered its Order appointing Ms. Gosnell as guardian *ad litem*, plaintiffs still have not requested the issuance of a summons for service upon the guardian. While Melody Gosnell appears to be a defendant in her own right and as a guardian *ad litem*, both defendants must be served in their correct capacities for this case to proceed, and there is no record that Ms. Gosnell has been served in her representative capacity.

At 460 days, this action is now the fifth oldest case pending in the Asheville Division. Further, it has now been more than 120 days since plaintiffs amended the Complaint to add an additional party. Not later than August 7, 2007, counsel for plaintiffs will advise the court as to what course of action plaintiffs intend to take. Finally, on a more academic note, the undersigned is concerned as to whether amendment of a complaint under Rule 15(a), Federal Rules of Civil Procedure, is the proper mechanism for adding an additional party inasmuch as Rule 19(a) speaks to permissive joinder as well as the entry of a court Order.

ORDER

IT IS, THEREFORE, ORDERED that plaintiffs advise the court as to the status of this case not later than August 7, 2007.

Signed: July 25, 2007

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Dennis L. Howell
United States Magistrate Judge

